

1 IN THE CIRCUIT COURT FOR
2 BARBOUR COUNTY, ALABAMA
3

4 CASE NUMBER: CV-96-215
5

6 RICHARD L. SEABORN,
7 Plaintiff,
8

9 vs.

10 R.J. REYNOLDS TOBACCO COMPANY, et al.,
11 Defendants.
12

13 DEPOSITION TESTIMONY OF:
14

15 DWIGHT HINSON
16

17 JUNE 8, 1999
18

19 BEFORE:
20

21 TERRY E. CRUTCHFIELD, COMMISSIONER, RPR
22
23

COPY

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STIPULATIONS

IT IS STIPULATED AND AGREED, by
and between the parties through their
respective counsel, that the deposition
of:

DWIGHT HINSON,

may be taken before Terry E. Crutchfield,
R.P.R., Commissioner and Notary Public, at
the law offices of Lightfoot, Franklin &
White, L.L.C., The Clark Building, 400
20th Street North, Birmingham, Alabama, on
the 8th day of June, 1999, commencing at
or about 9:15 a.m.

IT IS FURTHER STIPULATED AND
AGREED that it shall not be necessary for
any objections to be made by counsel as to
any question, and that counsel for the
parties may make objections and assign
grounds at the time of the trial, or at
the time said deposition is offered in
evidence, or prior thereto.

IT IS FURTHER STIPULATED AND
AGREED that notice of the filing of the

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1 deposition by the Commissioner is waived.

2 In accordance with Rule 5(d) of
3 the Alabama Rules of Civil Procedure, as
4 amended, effective May 15, 1988, I, TERRY
5 E. CRUTCHFIELD, am hereby delivering to
6 MR. R. GRAHAM ESDALE, the original
7 transcript of the oral testimony taken on
8 the 8th day of June, 1999, along with
9 exhibits.

10 Please be advised that this is
11 the same and not retained by the Court
12 Reporter, nor filed with the Court.

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I N D E XEXAMINATION BY:PAGE

MR. ESDALE

8

E X H I B I T S

Plaintiff's Exhibit 1

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Plaintiff's Exhibit 2

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A P P E A R A N C E S

APPEARING ON BEHALF OF THE PLAINTIFF:

BEASLEY, ALLEN, CROW, METHVIN, PORTIS &
MILES, P.C.

MR. R. GRAHAM ESDALE
218 Commerce Street
Montgomery, Alabama 36103

APPEARING ON BEHALF OF THE DEFENDANTS:

LIGHTFOOT, FRANKLIN & WHITE, L.L.C.

MR. LEE M. HOLLIS

MR. WILLIAM H. BROOKS

The Clark Building
400 20th Street North
Birmingham, Alabama 35203

JONES, DAY, REAVIS & POGUE

MR. RICHARD G. STUHAN

North Point
901 Lakeside Avenue
Cleveland, Ohio 44114

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A P P E A R A N C E S

(Continued)

APPEARING ON BEHALF OF THE DEFENDANTS:

WILLIAMS, POTTHOFF & WILLIAMS

MR. HORACE G. WILLIAMS, III

125 South Orange Avenue

Eufaula, Alabama 36027

BEFORE:

Terry E. Crutchfield, Commissioner, RPR

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1 I, Terry E. Crutchfield, Court
2 Reporter, acting as Commissioner, certify
3 that on this date as provided by Rule 30
4 of the Alabama Rules of Civil Procedure,
5 and the foregoing stipulations of counsel,
6 there came before me at the law offices of
7 Lightfoot, Franklin & White, L.L.C., The
8 Clark Building, 400 20th Street North,
9 Birmingham, Alabama, on the 8th day of
10 June, 1999, commencing at or about 9:15
11 a.m., DWIGHT HINSON, witness in the above
12 cause, for oral examination, whereupon,
13 the following proceedings were had.

14
15 DWIGHT HINSON,
16 having been first duly sworn, was examined
17 and testified as follows:
18

19 THE REPORTER: Usual
20 stipulations?

21 MR. ESDALE: I don't know about
22 reading and signing.

23 MR. STUHAN: We do want him to

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1 read and sign this transcript.

2 MR. ESDALE: Other than that, I
3 assume usual stipulations are all right?

4 MR. STUHAN: If usual means that
5 all objections are preserved except as to
6 the form of the question, yes, I agree to
7 that.

8
9 EXAMINATION BY MR. ESDALE:

10 Q. Will you state your name,
11 please, sir?

12 A. Dwight Hinson.

13 Q. Where do you live, Mr. Hinson?

14 A. [DELETED]

15 Q. What is your address?

16 A. Business or physical?

17 Q. Physical.

18 A. [DELETED]

19
20 Q. And your business address?

21 A. 3150 Tine, T-i-n-e, Avenue,
22 Montgomery 36108.

23 Q. How are you employed?

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1 A. By W.L. Petrey Wholesale
2 Company. Petrey is spelled P-e-t-r-e-y.

3 Q. Right. How long have you worked
4 for Petrey?

5 A. Five and a half years, a little
6 over five and a half.

7 Q. Let me back up just a little
8 bit. Where are you from originally?

9 A. Originally from North Carolina.

10 Q. Did you -- is that where you
11 went to high school?

12 A. Correct.

13 Q. And what about college?

14 A. In the state of North Carolina,
15 also.

16 Q. Where did you go to college?

17 A. Appalachian State and then
18 finished at N.C. State.

19 Q. What is your degree in?

20 A. Administration.

21 Q. When you got out of college --
22 what year did you graduate?

23 A. '77.

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1 Q. Where did you go to work?

2 A. Immediately out of college?

3 Q. Yes, sir.

4 A. Carolina Country Club, which is
5 a club in Raleigh, North Carolina.

6 Q. How long did you work there?

7 A. Six months.

8 Q. And then?

9 A. Went to work for Reynolds

10 Tobacco.

11 Q. So that would have been in?

12 A. '78, February '78, I think it

13 was.

14 Q. Did you go to work in

15 Winston-Salem?

16 A. No.

17 Q. What was your territory or --

18 well, let me back up. What did you do for
19 Reynolds when you started?

20 A. I was a sales representative.

21 Q. Where were you stationed?

22 A. In Roanoke Rapids, North
23 Carolina.

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3 Q. How long were you in Roanoke?

1 A. About a year and two months.

2 Q. Were you transferred?

4 A. I quit.

5 Q. Okay. So you were -- your first
6 employment with R.J. Reynolds was for
7 about a year and two months?

8 A. Correct.

9 Q. And then you went to work for
10 whom?

11 A. I just became self-employed.

12 Q. What kind of work were you
13 doing?

14 A. Beer and ice cream.

15 Q. Routes?

16 A. No. Shops in Macon, Georgia.

17 Q. Like floats or -- no, I'm just
18 kidding. That's such an odd combination.

19 A. They were -- it was a beer box
20 where you could drive up and buy case beer
21 and then drive-in ice cream shops.

22 Q. How long did you do that?

23 A. Six months.

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1 Q. Then where?

2 A. I went back with Reynolds.

3 Q. In what capacity?

4 A. Sales rep.

5 Q. What area?

6 A. Jacksonville, North Carolina.

7 Q. How long there?

8 A. I was there five years.

9 Q. At the time you went to work for
10 R.J. Reynolds, either the first time or
11 the second time, were there any training
12 programs or courses or anything that you
13 had to take when you first started?

14 A. No. It was just on-the-job
15 training.

16 Q. Were you given any type of an
17 employee handbook or anything like that,
18 that you can recall?

19 A. I don't recall.

20 Q. All right. So you were in
21 Jacksonville, North Carolina about five
22 years?

23 A. That's correct.

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1 Q. Did your job duties and
2 responsibilities remain the same pretty
3 much throughout those five years?

4 A. Correct.

5 Q. And your title being a sales
6 rep?

7 A. Correct.

8 Q. Where did you go after you left
9 Jacksonville?

10 A. I went to Charleston, South
11 Carolina.

12 Q. Still as a sales rep?

13 A. Yeah, calling on military
14 accounts.

15 Q. How long were you in Charleston?

16 A. About eight months.

17 Q. And then where?

18 A. Huntsville, Alabama --
19 Huntsville, Alabama.

20 Q. Approximately what year was
21 that, if you recall?

22 A. It was '85.

23 Q. And how long were you in

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1 Huntsville, Alabama?

2 A. About six years.

3 Q. So that would have taken you up
4 to about '91 approximately?

5 A. Correct.

6 Q. Were you a sales rep in
7 Huntsville, Alabama?

8 A. Assistant division manager.

9 Q. Is that a promotion from a sales
10 rep?

11 A. Correct.

12 Q. Did that occur at the time they
13 moved you from Charleston, South Carolina
14 to Huntsville, Alabama?

15 A. Correct.

16 Q. Where did you go in '91?

17 A. To Montgomery, Alabama.

18 Q. Is that when you left R.J.
19 Reynolds, or were you still --

20 A. No, I was still with Reynolds.

21 Q. So you went to Montgomery in
22 '91. What was your position with the
23 company?

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1 A. Division manager.

2 Q. How long did you stay in that
3 position?

4 A. Until October of '93.

5 Q. And then what occurred in
6 October of '93?

7 A. I left the company and went with
8 W.L. Petrey.

9 Q. Were they one of your customers
10 when you were division manager?

11 A. Yes, they were.

12 Q. Had you had any relationship
13 with W.L. Petrey prior to 1991?

14 A. No.

15 Q. Who hired you at W.L. Petrey?

16 A. Bill Jackson.

17 Q. What is your title with W.L.
18 Petrey?

19 A. Sales manager.

20 Q. Just in a nutshell, what are
21 your job duties and responsibilities as
22 sales manager with W.L. Petrey?

23 A. To maintain a sales force.

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1 Q. How many salesmen do you have
2 working underneath you?

3 A. Probably seventy.

4 Q. What type of geographic area do
5 you cover, or does your sales force cover?

6 A. We cover Alabama, Georgia,
7 Panhandle Florida, Tennessee, Mississippi.

8 Q. Are you responsible for all of
9 these geographic areas you just named?

10 A. Parts of them. All parts
11 mostly.

12 Q. In other words, is there another
13 sales manager with W.L. Petrey that would
14 also --

15 A. That would carry the -- cover
16 the North Alabama and Tennessee.

17 Q. Who is that?

18 A. Jack Sanders.

19 Q. Going back real quick through
20 your work with R.J. Reynolds, what were
21 your general duties as a sales rep?

22 MR. STUHAN: Are you asking him
23 about any particular job, or are you

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1 asking him about his duties as a sales
2 representative during the entire time that
3 he held that position in different
4 geographical locations?

5 Q. (BY MR. ESDALE) Well, I think
6 generally, and if they differ from area to
7 area, you can explain that to me. But
8 just generally, I guess, what were your
9 job duties and responsibilities?
10 Obviously, you're not going to be calling
11 on the same people in Roanoke as you would
12 be in Jacksonville. But as far as calling
13 on accounts and all, they might be the
14 same. If you could, explain that to me
15 just so I can get an idea about what a
16 sales rep with R.J. Reynolds does,
17 particularly you, but generally, also.

18 A. I was responsible for the
19 distribution of products at retail and the
20 point of sale or the advertisement that
21 was associated to displays that we might
22 have in the store.

23 Q. Were you calling on any type of

1 accounts particularly, let's say, in
2 Jacksonville?

3 A. It was a -- mainly anyone that
4 sold cigarettes whether -- if it was a
5 convenience store or supermarket or the
6 military.

7 Q. A minute ago you mentioned
8 products. Were there -- were you
9 responsible for any products other than
10 cigarettes?

11 A. At that time we had the
12 responsibility of the smoking and chewing
13 division of Reynolds, also.

14 Q. Were you responsible for any
15 products other than tobacco products?

16 A. No.

17 Q. At some point in time, did they
18 divide up smoking and chewing?

19 A. I'm not familiar with the exact
20 year, but somewhere in the -- probably the
21 early to mid '80s, they sold the smoking
22 and the chewing part to other companies,
23 and smoking and chewing being Prince

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1 Albert, Carter Hall, and the chewing being
2 Days Work and Work Horse, those type
3 brands.

4 Q. And then I assume you're
5 separating smoking, meaning smoking other
6 than cigarette products?

7 A. Correct.

8 Q. Do you have a general guess
9 about when that would have been?

10 MR. STUHAN: I object to that
11 question. You shouldn't ask the witness
12 to speculate, and the witness shouldn't
13 speculate.

14 A. I don't -- I don't know the
15 date

16 Q. (BY MR. ESDALE) Was it before
17 1990?

18 A. I don't recall that either.

19 Q. Was it, if you know, before
20 your promotion to assistant division
21 manager?

22 A. I think so, but I'm not
23 positive.

1 Q. Okay. You don't, as we sit here
2 today, recall any, as an assistant
3 division manager in Huntsville, Alabama,
4 any particular sales responsibilities as
5 it relates to chewing tobacco or --

6 A. No.

7 Q. -- non-cigarette products?

8 A. No.

9 Q. When you said you were
10 responsible for the distribution of
11 product, what responsibilities, if you can
12 be more specific, did you have as far as
13 the distribution of the product goes?

14 MR. STUHAN: Are you talking
15 about the times when he was a sales
16 representative?

17 MR. ESDALE: Yes.

18 A. As a sales representative being
19 responsible for the distribution, really
20 was not responsible for distributing the
21 product to the stores. I was responsible
22 for making sure that a product was
23 available in the store. They would order

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1 the product themselves through someone
2 else.

3 Q. (BY MR. ESDALE) Okay. Explain
4 to me in a little bit more detail. When
5 you say a product, are you talking about
6 just every product that R.J. Reynolds
7 made? Were y'all trying to, you know,
8 make sure that there was shelf space
9 available for it, or were there particular
10 products you were primarily responsible
11 for? And if it didn't work either one of
12 those ways, if you can explain it to me.

13 A. I was responsible for having the
14 brands available in the store through
15 either a display or shelf space.

16 Q. How did you do that, make sure
17 that there were displays or shelf space
18 available in stores which, I assume, R.J.
19 Reynolds didn't own?

20 A. I would work with the owners of
21 the stores in securing space that was
22 available.

23 Q. And how did you do that? In

1 other words, how would you secure a spot
2 in a store by working with the owner?

3 A. There were -- through
4 relationships or either there was some
5 contract monies available back then where
6 you would actually pay them for their
7 space.

8 Q. You say contract monies were
9 available back then. Did that at some
10 point in time end?

11 A. Back then was just -- yeah, I
12 think it still exists, but I was just
13 referring to the time frame.

14 Q. When you were a sales rep?

15 A. Correct.

16 Q. What is a contract money?

17 A. It's monies that's paid by the
18 tobacco company for maintaining a position
19 for display within the store.

20 Q. Would different retail
21 establishments charge different prices for
22 maintaining a display?

23 A. Well, now, the contract was

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1 available to them at a certain rate, and
2 if they wanted to participate in that
3 contract, it was the same available
4 contract for everyone.

5 Q. Do you know what the rate was?

6 A. No. I can't remember what the
7 rates were back then.

8 Q. Okay. Did you actually, as a
9 representative of R.J. Reynolds, enter
10 into contracts with the retailers, or was
11 that handled by someone else?

12 A. I would write the contract, or I
13 would have the contract signed, if it was
14 already written, between myself and the
15 retailer --

16 Q. Okay.

17 A. -- if it was an independent
18 account.

19 Q. And then, to the best of your
20 recollection, what were the retailer's
21 responsibilities and duties under the
22 contract as far as maintaining space or
23 making space available to R.J. Reynolds?

1 A. Their duties were to ensure that
2 the product was -- or that the display was
3 full and that it was unobstructed.

4 Q. When you say a display, can you
5 be a little more specific, or were there
6 numerous ones in the store, or is it just
7 a main -- like a cigarette center, or how
8 did that work?

9 A. A display could have been either
10 on the counter, or it could have been a
11 floor unit that would have been on the
12 floor.

13 Q. Now, I assume then some of these
14 contracts provided for more than one
15 display unit?

16 A. Correct.

17 Q. Who made the determination as to
18 which products would be displayed once a
19 contract had been agreed upon?

20 A. The company, being Reynolds.

21 Q. Okay. Was that something that
22 was information that was sent down to you
23 through the chain of command in the sales

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1 force, or did you have the ability to
2 decide on that as a sales rep as to which
3 of your products needed more display?

4 A. It came down through the chain
5 of command.

6 Q. If you would, at the time you
7 became assistant division manager in
8 Huntsville, Alabama, can you tell me what
9 the basic structure of the sales force was
10 in that time period from, say, '85 to '91?

11 MR. STUHAN: Are you asking
12 about the basic structure of the sales
13 force in the Huntsville territory?

14 MR. ESDALE: If it was different
15 from everywhere else.

16 MR. STUHAN: Well, I don't know
17 if the witness knows about the structure
18 of the sales force anywhere else is why I
19 asked for that clarification.

20 A. In Huntsville, it was basically
21 a division manager, two assistants, and
22 roughly nine to ten sales reps.

23 Q. (BY MR. ESDALE) Who was the

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1 other assistant? I assume there was
2 another assistant with you?

3 A. I think the only one was Phil
4 Settle.

5 Q. Did you say Settle or Subtle?

6 A. Settle, S-e-t-t-l-e.

7 Q. Were y'all both physically
8 located in Huntsville, Alabama?

9 A. That's correct.

10 Q. Who was your division manager?

11 A. There was three during the time
12 period. You want all three?

13 Q. Well, let's start with your
14 first one in '85 when you came there.

15 A. I can't recall his name.

16 Q. All right. Let's go to the
17 second one.

18 A. Tom Odom, O-d-o-m.

19 Q. Was the second one? And then
20 the last one?

21 A. Linda Forrey, F-o-r-r-e-y.

22 Q. If you know, what generally
23 were the division managers responsible for

1 back in that time period?

2 A. He oversaw the division, being
3 the two assistants and the sales reps --

4 Q. Did you --

5 A. -- and their duties --

6 Q. I'm sorry. I didn't mean to
7 interrupt you.

8 A. And their duties that they
9 performed.

10 Q. Were the duties that the sales
11 rep performed during the time you were in
12 Huntsville, Alabama approximately or about
13 the same as they were that you described
14 to me just previously, and that is,
15 calling on accounts, making sure displays
16 were -- or products displayed and things
17 of that nature?

18 A. That's correct.

19 Q. What geographical area were or
20 was the division manager over you when you
21 were in Huntsville responsible for?

22 A. Geographically?

23 Q. Yes.

1 A. North Alabama, from Cullman
2 north.

3 Q. And was that the way sales
4 territories were divided, by geographic
5 areas?

6 A. That's correct.

7 Q. Was that limited to just North
8 Alabama, or did you have portions of
9 Georgia and Tennessee and --

10 A. Just North Alabama.

11 Q. Cullman north?

12 A. Correct.

13 Q. Then in '91 -- let me back up
14 just for a second. Do you know what the
15 structure of the sales force was above the
16 division manager level in that time period
17 between '85 and '91?

18 A. I know who my immediate boss was
19 after Tom Odom, and that was a regional
20 manager.

21 Q. Okay. Who was that?

22 A. At that time, it was Jim
23 Smotherman.

1 Q. Were regions also geographic?

2 A. That's correct.

3 Q. Do you know what area,
4 geographic area Jim Smotherman was
5 responsible for?

6 A. I know that he had part of the
7 State of Alabama and the eastern part of
8 Tennessee.

9 Q. Do you know how many divisions
10 approximately a regional manager would
11 have responsibility over?

12 A. It would have been five or six.

13 Q. Do you know about how many
14 divisions there are in Alabama?

15 A. At that time, there were only
16 two, I think.

17 Q. Did they have any -- go ahead.

18 A. Three. Excuse me.

19 Q. All right. Did they have any
20 designation like the northern division,
21 middle division, or southern division, or
22 anything like that?

23 A. They were just named for the

1 city they were in.

2 Q. What divisions back at that time
3 do you recall there being?

4 A. Huntsville, Birmingham, and
5 Montgomery.

6 Q. And it's my understanding you
7 became the division manager in 1991 for
8 the Montgomery division?

9 A. That's correct.

10 Q. Did you have assistant division
11 managers underneath you beginning in 1991?

12 A. No. I operated separately.

13 Q. Was there any reason for that?

14 A. That was just the manpower
15 issued

16 Q. Was less required?

17 A. It was just less sales reps.

18 Q. How many sales reps did you have
19 underneath you?

20 A. Eight, I think. Eight or nine.

21 Q. What geographic territory were
22 you responsible for as a division manager?

23 A. Middle part of Alabama from

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1 Clanton to Troy, east and west.

2 Q. All the way to the state line?

3 A. Correct.

4 Q. Did that include Eufaula?

5 A. Yes.

6 Q. And Barbour County?

7 A. Yes.

8 Q. Did it go down as far as

9 Abbeville?

10 A. No.

11 Q. Did it include Clayton, Alabama?

12 A. Yes.

13 Q. Who was the division manager

14 before you in Montgomery?

15 A. Bob Taylor.

16 Q. Do you know where he is now?

17 A. Yes.

18 Q. Where is he?

19 A. He works for Petrey, also.

20 Q. Okay. Do you know how long Bob

21 Taylor was with R.J. Reynolds as a

22 division manager in Montgomery?

23 A. No.

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1 Q. Do you know how long he has
2 worked for Petrey?

3 A. Probably around four years.

4 Q. Do you know where he worked
5 before he -- or did he go straight from
6 R.J. Reynolds to Petrey?

7 A. No. He worked for Russell --
8 Russell Gasoline, I think is what it's
9 called.

10 Q. Did you have any specific type
11 of stores that you were responsible for
12 when you were division manager in
13 Montgomery?

14 A. You mean personally?

15 Q. Right. Or even as a manager.
16 It's probably not a very good question.
17 I'm just trying to get an idea. I had
18 seen some terminology used about chain
19 accounts and direct accounts and things
20 that I'm not really familiar with. And I
21 didn't know, as a division manager, are
22 you responsible for every cigarette that's
23 sold by R.J. Reynolds in your geographic

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1 territory, or do you have overlapping
2 responsibilities maybe with a different
3 type of salesmen, if you --

4 A. Some --

5 Q. -- understand what I'm asking
6 you there?

7 A. Some of the accounts would have
8 been called on by a sales rep, and other
9 accounts would have been called on what
10 was called back then a chain account
11 manager.

12 Q. Now, what about wholesale
13 managers or wholesale accounts?

14 A. Wholesale accounts were called
15 on within the division by whoever was
16 assigned to them.

17 Q. Would Petrey be considered a
18 wholesale account?

19 A. Yes.

20 Q. And can you give me some
21 examples of chain accounts that were
22 located in the Montgomery division?

23 A. Pacecar, Quick Shops, Cougar

1 Oils would have been some examples of
2 stores that were chain accounts.

3 Q. Can you give me just a rough
4 definition of what a chain account is?

5 A. A chain account would -- its
6 classification would have been more than
7 five stores, a group with more than five
8 stores.

9 Q. Would larger retailers like
10 Bruno's and Big B Drugs or Rite Aid
11 Pharmacies, things like that, be
12 considered a chain account, also?

13 A. That is correct.

14 Q. Are you familiar with Beeline
15 Stores?

16 A. Yes, I am.

17 Q. What type of an account is that?

18 A. It would be a chain account.

19 Q. Were you responsible for Beeline
20 Stores as a division manager in
21 Montgomery?

22 A. Correct.

23 Q. You were also responsible for, I

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1 think you said -- I'm not trying to be
2 redundant -- Petrey Wholesale?

3 A. Correct.

4 Q. Did you have any salesmen
5 assigned to -- specifically assigned to
6 Petrey Wholesale other than --

7 A. Bob Taylor and Larry Smith.

8 Q. Do you know where Larry Smith is
9 now?

10 A. He still lives in Montgomery.

11 Q. Do you know who he works for?

12 A. He works for Reynolds Tobacco.

13 Q. Do you know what his position
14 is?

15 A. I think it's sales
16 representative.

17 Q. Who was responsible for the
18 Beeline Stores?

19 A. I called on them.

20 Q. Personally yourself as a
21 division manager?

22 A. Correct.

23 Q. How many stores did they have?

1 A. Somewhere between twenty-five
2 and thirty. I'm -- I don't recall back
3 then exactly how many they had.

4 Q. Do you know what geographic
5 areas they were located in?

6 A. They were in the central part of
7 Alabama and the Panhandle of Florida.

8 Q. Were you responsible for display
9 spaces and things like that with Beeline
10 then while you were division manager in
11 Montgomery?

12 A. Correct.

13 Q. In addition to display areas --
14 well, let's talk about that just for a
15 minute before I move on. What leeway did
16 you have as a division manager as far as
17 deciding or trying to sell display space?
18 In other words, could you try to talk them
19 into end cap space or point of purchase,
20 you know, right there at the cash register
21 space, or was that something that was
22 spelled out by the contract, or if it
23 worked a different way?

1 MR. STUHAN: I object to the
2 form of the question. It seems to me that
3 it's multiple questions, so I object on
4 the grounds that it's a compound question.
5 If the witness understands it and can
6 answer it, he's free to do so.

7 A. The contract specified whether
8 it was a counter display or if it was an
9 end cap display.

10 Q. (BY MR. ESDALE) Now, I assume
11 just based on -- again, I have very little
12 understanding of how this works, but I've
13 seen stores that have several counters in
14 it, you know, or like two cash registers
15 even in a small store. Would the contract
16 provide for counter display to each cash
17 register, or was that something that you,
18 as a salesman, were -- would you go in
19 there and say, you know, I want -- we
20 would like for you to purchase a -- or, we
21 would like to purchase a counter display
22 by cash registers number one and two?

23 A. You could -- you have the choice

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1 of deciding where you wanted the display.

2 Q. The salesperson did?

3 A. Correct.

4 Q. I assume it would -- was that
5 solely your choice under the contract, or
6 would that be something that the retailer
7 would also have to agree with?

8 A. They would also have to agree
9 with it.

10 Q. Were the price structures for
11 these various displays divided up in any
12 way as far as the square footage of the
13 store goes or sales volumes or anything
14 like that?

15 MR. STUHAN: Object to the form
16 of the question. I don't know what the
17 term price structure means; therefore, the
18 question is vague and ambiguous.

19 A. Yeah, I don't understand the
20 question either.

21 Q. (BY MR. ESDALE) Well, let me
22 ask you this. In other words, if you --
23 would the price under this contract for an

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1 end cap in a Bruno's store be the same
2 price as an end cap in a Beeline store?

3 A. I can't answer because I don't
4 -- I really don't still -- I don't -- the
5 end cap in a Beeline store would -- there
6 would not be one in there because it was a
7 convenience store.

8 Q. Okay. Would there be a counter
9 display probably?

10 A. There would be a counter display
11 in that type of store.

12 Q. What about -- let's just say --
13 I'm using this as an example -- a larger
14 store, is there going to be a price
15 differential between a counter display in
16 a Beeline store and a counter display in a
17 Rite Aid or a counter display in a
18 Bruno's?

19 A. As far as the -- now, again, I
20 don't -- that -- when you say price, I
21 don't understand what price means.

22 Q. Well, it's my understanding --
23 again, I might be operating under a

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1 misunderstanding -- that R.J. Reynolds
2 paid the retailers, I assume, a price for
3 maintaining a display in their stores?

4 A. Right. If -- the price for the
5 display would remain constant between a
6 Beeline, a Rite Aid, a whatever it might
7 be, for the counter display.

8 Q. So it wouldn't matter what
9 traffic or square footage or volume any
10 store was doing, the price that R.J.
11 Reynolds would pay to the retailer was
12 based on the type of display?

13 A. The type of display, and volume
14 would have a play in it, too, that the
15 more dollars would be paid if the volume
16 of the account was greater as it went up,
17 as the volume of the products sold went
18 up.

19 Q. Okay. And is it my
20 understanding that what product was
21 displayed was determined by someone higher
22 up or through company management?

23 A. That's correct.

1 Q. When you were division manager
2 in Montgomery, who was your regional
3 manager?

4 A. Frank Tate.

5 Q. Do you know who Frank Tate
6 reported to?

7 A. Jim Best.

8 Q. And what was Jim Best's title at
9 that time?

10 A. I think it was southeastern
11 vice president or something like that. It
12 was VP of sales.

13 Q. Do you know if it was folks like
14 Frank Tate and Jim Best that were making
15 decisions on what products were displayed
16 or if it was coming from somebody else in
17 the marketing department or something like
18 that, if you know?

19 A. I don't know.

20 Q. Could Frank Tate or Jim Best
21 have any say-so in the products that were
22 displayed, if you know?

23 A. I don't know.

1 Q. In addition to displays, did the
2 salesmen have certain controls over
3 pricing?

4 A. No. &a1097v5520H|

5 Q. What other types of promotional
6 activities were the salesmen responsible
7 for other than display space?

8 A. Whatever the promotion was or
9 whatever was decided upon in Winston-Salem
10 through whoever it was -- again, followed
11 chain of command down, and we worked the
12 work plan, which is -- the work plan was
13 whatever they determined we were going to
14 be promoting or doing that month.

15 Q. What other types of promotions
16 were there, if you can give me some
17 examples, other than obviously display
18 space? In other words, what did you do or
19 did R.J. Reynolds, as a company, do to
20 promote the sale of their product?

21 A. There would have been offers of
22 a buy one, get one free or cents off
23 promotions, based on specific brands.

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1 Q. Now, as far as the cents off
2 promotion, was that something that a
3 salesman would have some leeway with as to
4 how many cents off?

5 A. No. It was typically done with
6 coupons.

7 Q. Could the salesman decide -- as
8 opposed to a thirty cents off, could he
9 make it a twenty cents off promotion?

10 A. If we had had dual coupons,
11 yeah, he could have. That would have been
12 possible.

13 Q. Were you at any time ever
14 involved or aware of any litigation
15 involving M.O. Carroll and R.J. Reynolds?

16 A. Was I aware of it?

17 Q. Right.

18 A. Yes, I was.

19 Q. Were you deposed in that case?

20 A. No.

21 Q. Do you know what that case
22 involved?

23 A. Yes.

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1 Q. What did it involve?

2 A. Well, I was -- I was not
3 deposed. I did give testimony in the
4 trial.

5 Q. Trial. What did your testimony
6 concern in that case?

7 A. Basically how -- what we did at
8 Petrey, how we operated.

9 Q. Were you already at Petrey at
10 the time?

11 A. That's correct.

12 Q. Were you ever furnished any
13 information at any time, whether -- well,
14 at any time during your employment with
15 R.J. Reynolds regarding health effects of
16 smoking?

17 A. No.

18 (Whereupon, Plaintiff's Exhibit
19 Number 1 was marked for
20 identification and a copy of
21 same is attached hereto.)

22 Q. Mr. Hinson, I'm going to show
23 you what has been marked as Plaintiff's

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1 Exhibit 1. Do you ever recall --

2 A. God, I can't read that.

3 Q. Well, I mean, it's not a good
4 copy. Take a minute to read that, if you
5 can. If you've got any questions about
6 what you're seeing, I maybe can help you.

7 A. (Witness complies.)

8 Q. Here, you can keep that if you
9 need to. Have you ever seen that document
10 before, that you can recall?

11 A. No, I haven't.

12 Q. Have you ever seen anything that
13 says something substantially similar to
14 that at a time back around 1990?

15 A. No.

16 Q. Had you ever made any request or
17 -- that your sales personnel perform any
18 type of an audit or anything similar to
19 this?

20 A. No, sir.

21 Q. I assume then you never received
22 any request through management to identify
23 stores similar to the ones that are

1 identified in Plaintiff's Exhibit 1?

2 A. No, I didn't.

3 (Whereupon, Plaintiff's Exhibit
4 Number 2 was marked for
5 identification and a copy of
6 same is attached hereto.)

7 Q. I'm going to show you what has
8 been marked as Plaintiff's Exhibit 2.

9 A. (Witness complies.)

10 Q. Have you ever seen that document
11 before?

12 A. No.

13 Q. Have you ever seen anything
14 similar to it as far as the contents of
15 it?

16 A. No, sir.

17 Q. Do you have any understanding of
18 what the definition of a retail young
19 adult smoker retailer account is?

20 A. No, I don't. I don't understand
21 -- I understand what he's saying here, but
22 I -- you know, I guess that's something
23 that he either determined himself or she

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1 or whoever this R.G. is.

2 Q. Let me -- and that's what I was
3 going to ask you about. Have you ever
4 heard of or met or are familiar with in
5 any way the name of R.G. Warlick?

6 A. I have not heard of him. I have
7 heard the name McMahon at some point in
8 time, but I do not remember what it was
9 about.

10 Q. Did you ever receive any
11 correspondence from any source regarding
12 the young adult market?

13 A. Not that I recall, no.

14 Q. Was the young adult market ever
15 discussed at any sales meetings?

16 A. Not that I recall, no.

17 Q. How often would y'all have sales
18 meetings?

19 MR. STUHAN: During what period
20 of time?

21 MR. ESDALE: '85 to '91.

22 A. Probably once every four to six
23 weeks.

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1 Q. (BY MR. ESDALE) Who all would
2 that involve as far as geographic
3 territories?

4 A. It would involve the regional
5 manager and division people. And then the
6 division would have a meeting with their
7 sales people.

8 Q. Were there any national meetings
9 that you attended?

10 A. No.

11 Q. At any time, ever?

12 A. I'm trying to remember. I did
13 go to one in Orlando. I can't remember if
14 it was a national meeting or not.

15 Q. Do you know about when that was?

16 A. It was the early '90s, '90, '91,
17 somewhere in there.

18 Q. Was it while you were still in
19 Huntsville or after you moved to
20 Montgomery?

21 A. I think it was after I went to
22 Montgomery.

23 Q. Was there any one person during

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1 the '85 to '91 time period that would be
2 like the head of the sales force, to your
3 knowledge, on a national basis?

4 A. I think -- and again, I can't
5 remember exact time frames. Yancey Ford
6 was the president, vice-president of sales
7 for the company, and I'm not sure exactly
8 the dates and time frames that he was
9 there.

10 Q. Just, again, to make sure, did
11 you ever receive any request at any time
12 during your employment with R.J. Reynolds
13 to identify young adult smoking accounts
14 or smoker accounts?

15 A. Not that I recall, no.

16 Q. Did you ever receive any request
17 to concentrate any advertising or
18 promotional efforts in areas in the
19 general vicinity of high schools or
20 college campuses?

21 A. No.

22 Q. The products that were displayed
23 in the displays you were talking about and

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1 the products that were made the basis for
2 these other types of promotional
3 activities, I think you mentioned a two
4 for one and cents off coupons, did those
5 encompass the entire product line of R.J.
6 Reynolds, or were there primarily specific
7 products that were concentrated on?

8 A. They were brand specific.

9 Q. Can you give me some of the
10 brands that were chosen by management to
11 be promoted during the '85 to '91 time
12 period?

13 A. Winston, Salem, Camel, Vantage,
14 and Doral.

15 Q. Were they all promoted the same
16 at different times, or did the types of
17 promotion vary from product to product?

18 A. It varied.

19 Q. Can you give me any examples of
20 anything other than the cents off, two for
21 one, and display areas that were used to
22 increase the sales of any of these
23 products?

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1 A. Other than the cents off and the
2 buy two -- or buy something, get something
3 free, that would have been basically what
4 we did.

5 Q. Do you specifically recall
6 anything with regard to the Camel brand?

7 A. There were hats and, I think,
8 T-shirts.

9 Q. And what type of promotion was
10 that?

11 A. It would have again been buy
12 something, get something free.

13 Q. So it wasn't always a buy
14 something and get the product free? It
15 was -- being tobacco product, cigarettes
16 free -- there were other types of
17 giveaways?

18 A. Correct. I mean, it could have
19 been -- it was considered a buy something,
20 buy two packs, three packs, whatever the
21 pack purchase might have been, and get
22 another pack free or get a hat free or get
23 a T-shirt free.

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1 Q. Would the retailers have hats
2 and T-shirts available in the store, or
3 did this involve mailing something back
4 in?

5 A. It would have been packaged at
6 the store in a package. They would have
7 purchased the whole package at one time.

8 Q. What about Winston?

9 A. Same.

10 Q. Do you recall if Winston had a
11 hat and T-shirt deal going on?

12 A. I can't rememer specifics, but
13 it was generally the same type of things.

14 Q. Aside from receiving any
15 literature on smoking and health, was that
16 topic ever discussed at any sales
17 meetings?

18 A. Not that I recall.

19 Q. Did any of your accounts or
20 customers at any time ever ask you any
21 questions about smoking and health?

22 A. No, not that I recall.

23 Q. Do you still call on stores

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1 today?

2 A. Occasionally.

3 Q. Do you call on any stores in
4 Barbour County?

5 A. No.

6 Q. At any time -- I think you
7 mentioned earlier about Beeline -- have
8 you called on stores in Barbour County?

9 A. Time frame?

10 Q. Any time. I guess my question
11 would be this. When is the last time you
12 have been to Barbour County?

13 A. Probably the last time I was in
14 Barbour County was '95, '96.

15 Q. And what were you there for?

16 A. For the M.O. Carroll trial.

17 Q. Any time other than that as far
18 as sales responsibilities or promotional
19 activities go?

20 A. I can remember being over there,
21 but I can't remember a date or a time. It
22 was -- it would have been in the early
23 '90s.

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1 Q. Do you still have any contact
2 with any of the folks with the Beeline
3 stores?

4 A. Yes.

5 Q. Who?

6 A. Dan Walden.

7 Q. What is his title?

8 A. Excuse me?

9 Q. What is his title?

10 A. I think he's the marketing
11 manager now.

12 Q. Where does he live, if you know?

13 A. I think he lives in Troy,
14 Alabama.

15 Q. Anybody else with Beeline?

16 A. Not that I have any contact with
17 now.

18 Q. Do you know how much the -- how
19 much a display costs, in other words, what
20 amount would it be that R.J. Reynolds
21 would pay to a convenience store to have a
22 counter display?

23 MR. STUHAN: I object to the

1 question to the extent it asks him to tell
2 you what it costs today, insofar as he's
3 testified that he hasn't worked for
4 Reynolds for five and a half years and
5 anything he would say on that subject
6 would be pure speculation. If you are
7 asking him for how much it would cost at
8 some earlier period, putting aside my
9 reservations about the relevance of all of
10 this, I think you ought to identify a
11 particular period for him to talk about.

12 Q. (BY MR. ESDALE) Any time during
13 the last time you were working for R.J.
14 Reynolds?

15 A. Again, I don't know -- remember
16 specific numbers, but it would range
17 anywhere probably from six dollars to -- a
18 month to twenty-eight, thirty dollars a
19 month.

20 Q. That's for a counter --

21 A. A counter.

22 Q. -- display?

23 A. Correct.

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1 Q. Which is what size?

2 A. About the size of these two
3 pieces of paper (indicating).

4 Q. It's about sixteen inches wide
5 by maybe --

6 A. Eighteen.

7 Q. -- eleven inches tall?

8 A. Deep, yeah.

9 Q. Did you also -- or were you
10 involved with end caps at other retail
11 stores other than convenience stores?

12 A. I don't think we had that many
13 in Montgomery simply because it was a
14 package-oriented type locations. We
15 didn't have a whole lot of supermarkets
16 that we called on directly. They were all
17 called on by someone else that would have
18 been chain-oriented.

19 Q. Who were the chain account folks
20 back in the '85 to '91 time period, if you
21 recall?

22 A. John Sweeney and Bob Huffman.

23 MR. ESDALE: I think that's all

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1 I've got.

2 MR. STUHAN: I have no
3 questions.

4 MR. WILLIAMS: I have no
5 questions.

6 FURTHER DEPONENT SAITH NOT

produced by R.J.R.T.C.

in

HUMPHREY

21

22

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C E R T I F I C A T E

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, TERRY CRUTCHFIELD, R.P.R.,

HEREBY CERTIFY THAT THE ABOVE AND
FOREGOING DEPOSITION WAS TAKEN DOWN BY
ME ON COMPUTERIZED STENOTYPE, AND THE
QUESTIONS AND ANSWERS THERETO WERE
TRANSCRIBED BY ME, AND THAT THE
FOREGOING REPRESENTS A TRUE AND
CORRECT TRANSCRIPT OF THE DEPOSITION
GIVEN BY WITNESS UPON SAID HEARING.

I FURTHER CERTIFY THAT I AM
NEITHER OF COUNSEL, NOR OF KIN TO THE
PARTIES IN THE ACTION, NOR AM I IN ANYWISE
INTERESTED IN THE RESULT OF
SAID CAUSE.

TERRY E. CRUTCHFIELD
COMMISSIONER

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McMahon
Union Manager

RJR

January 10, 1990

TO: Sales Reps

SUBJECT: Young Adult Market

VERY IMPORTANT, PLEASE READ CAREFULLY!!!

Dear All:

The following information is needed back in this office no later than January 22. I need all of you to study the attached scroll list of monthly assignments in your assignment that are presently doing more than 100 cars for purposes of identifying stores that are heavily frequented by young adult shoppers. These stores can be in close proximity to colleges, high schools or areas where there are a large number of young adults frequent the store.

The purpose of this exercise, is to be able to identify those stores during 1990 where we would try to keep premium items in stores at all times. I might add, these stores may or may not have Preferred Presence units. I realize that you do not have enough time between now and January 22nd to visit all stores in your assignment, but by now I would think you would have a good feeling on this subject. Should you absolutely need more time to identify any particular convenience store, please advise upon receipt of this letter. I am asking you to return this list highlighting those stores that you are classifying as young adult.

Thanking you in advance on this subject.

Sincerely,

J. P. McMahon

JPM/

Enclosure

PLAINTIFF'S
EXHIBIT

1
Hinson

Exhibit #62

51938 9123

COOR SEWLIN KEE --- BRADY DRAKE

2016 203 7288

18:05 22/02/92

RJR Sales Company
3508 N. Moore Avenue
Moore, Oklahoma 73160

R.G. Warlick
Division Manager

RJR

April 5, 1990

TO: ALL AREA SALES REPRESENTATIVES
SALES REPRESENTATIVES
CHAIN SERVICE REPRESENTATIVES

SUBJECT: YOUNG ADULT MARKET SIS ACCOUNT GROUPING

Ladies and Gentlemen:

Due to a revision in the definition of what is a Retail Young Adult Smoker-Retailer Account, you will be required to resubmit again your list of Y.A.S. accounts in your territory utilizing the scroll masters. The criteria for you to utilize in identifying these accounts are as follows:

(1) All package action calls located across from, adjacent to are in the general vicinity of the High Schools or College Campus. (under 30 years of age)

(2) The majority of package actions accounts would qualify in such towns as Norman, OK.

You should identify each of the selected accounts in the left margin on the account scroll list as a:

YA1 - High volume package action accounts where you would normally sell 50 units plus of our package promotions program.

YA2 - High volume package action accounts where you would normally sell 20 unit plus of our package promotions program.

Please do not take excessive time in completing this list and rely solely upon your knowledge of your territory. Please complete this list immediately upon receipt and mail back to the Division Office.

Your timely follow through is most important.

Sincerely,

R.G. Warlick
R.G. Warlick

PLAINTIFF'S
EXHIBIT

2
Hinson

PLAINTIFF'S
EXHIBIT

194

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